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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

8 STATE OF NEVADA ex rel. ROBERT  
9 EDWARD HAGER and ANDREW J. LUDEL,  
10 qui tam plaintiffs, on behalf of real parties in  
interest, WASHOE COUNTY, CLARK  
COUNTY, HUMBOLDT COUNTY, STOREY  
COUNTY, PERSHING COUNTY,  
11 CHURCHILL COUNTY, CITY AND COUNTY  
OF CARSON CITY, ESMERALDA COUNTY,  
12 WHITE PINE COUNTY, LYON COUNTY,  
ELKO COUNTY, NYE COUNTY, MINERAL  
13 COUNTY, LANDER COUNTY, EUREKA  
COUNTY, LINCOLN COUNTY, DOUGLAS  
14 COUNTY and STATE OF NEVADA.

3:10-cv-419-RCJ-PAL

## **ORDER**

15 || Plaintiffs.

16 | v.

17 COUNTRYWIDE HOME LOANS  
18 SERVICING, LP, et al.,  
Defendants.

21 Currently before the Court is a Motion to Remand (#94) filed by *qui tam* plaintiffs Robert  
22 Edward Hager and Andrew J. Ludel ("Plaintiffs"). The Court heard oral argument on the  
23 motion on January 18, 2011.

## BACKGROUND

Plaintiffs filed a Third Amended Complaint (the "Complaint") against numerous banks and mortgage companies and specifically named the Federal National Mortgage Association ("Fannie Mae") as a defendant. (See Complaint (#1-1) at 79-80). In their complaint, Plaintiffs seek to recover treble damages and liquidated penalties pursuant to Nevada's False Claims

1 Act, NRS §§ 357.080 and 357.040(1)(g)&(h), because the defendants used false records or  
2 statements in order to conceal, avoid, or decrease obligations to pay all required documentary  
3 transfer taxes for the transfer of title or interests in real property in the State of Nevada and  
4 its counties. (*Id.* at 81, 83, 88-89). Plaintiffs allege that defendants were jointly and severally  
5 liable in their capacities as buyer and seller, pursuant to NRS § 375.030(2), because there was  
6 no exemption listed in NRS § 375.090 that insulated them from liability for the payment of  
7 transfer taxes.<sup>1</sup> (*Id.* at 83). Throughout the complaint, Plaintiffs allege that Fannie Mae made  
8 false statements or intentionally misrepresented that it was a tax-exempt government entity  
9 or government agency. (*Id.* at 84 (¶ 7), 86 (¶¶ 17-18), 88 (¶ 22)).

10 Defendant Fannie Mae and the Federal Housing Finance Agency ("FHFA"), as  
11 conservator and intervenor<sup>2</sup> of Fannie Mae, filed a Notice of Removal. (Pet. for Removal (#1)).  
12 In their notice, they argued that: (a) the FHFA was a federal agency with an unconditional right  
13 to removal; (b) this Court had original jurisdiction based on Fannie Mae's federal charter; and  
14 (c) this Court had original jurisdiction based on questions of federal law. (*Id.* at 4-6). Plaintiffs  
15 filed the current motion to remand. (Mot. to Remand (#94)).

## **LEGAL STANDARD**

Pursuant to 28 U.S.C. § 1441, "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district . . . where such action is pending." 28 U.S.C § 1441(a). The district courts have "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. The proper procedure for challenging removal is a motion to remand, and a federal court must order remand if there is any defect which causes federal subject matter jurisdiction to fail, or if there is any defect in the removal procedure. 28 U.S.C. § 1447(c). The burden of

<sup>1</sup> Nevada Revised Statute § 375.090(2) provides a transfer tax exemption to "the United States, any territory or state or any agency, department, instrumentality or political subdivision thereof."

<sup>2</sup> This Court granted the FHFA's motion to intervene as the conservator for Fannie Mae. (See Mot. to Intervene (#2); Order (#84)).

1 establishing removal jurisdiction is on the proponent of federal jurisdiction. See *Serrano v. 180*  
 2 *Connect, Inc.*, 478 F.3d 1018, 1021 (9th Cir. 2007) (noting that the “long-standing, near  
 3 canonical rule” is that the proponent of federal jurisdiction has the burden of establishing  
 4 removal jurisdiction).

## 5 DISCUSSION

6 Fannie Mae contends that its federal charter, 12 U.S.C. § 1723a(a), confers original  
 7 federal subject matter jurisdiction on this Court and relies on *Pirelli Armstrong Tire Corp.*  
 8 *Retiree Med. Benefits Trust v. Raines*, 534 F.3d 779 (D.C. Cir. 2008) to support its argument.  
 9 Fannie Mae’s charter, pursuant to 12 U.S.C. § 1723a, states that it has the power “to sue and  
 10 to be sued, and to complain and to defend, in any court of competent jurisdiction, State or  
 11 Federal.” 12 U.S.C. § 1723a(a).

12 In *Am. Nat’l Red Cross v. S.G.*, 505 U.S. 247, 112 S.Ct. 2465, 120 L.Ed.2d 201 (1992),  
 13 the Supreme Court held that the Red Cross’s charter provision that authorized it “to sue and  
 14 be sued in courts of law and equity, State or Federal, within the jurisdiction of the United  
 15 States” conferred original jurisdiction on federal courts over all cases in which the Red Cross  
 16 was a party. *Id.* at 248, 112 S.Ct. at 2467. The Supreme Court held that the Red Cross was  
 17 authorized to remove from state to federal court any state-law action it was defending. *Id.*

18 In *Pirelli*, the D.C. Circuit, applying the *Red Cross* rule, held that Fannie Mae’s sue-and-  
 19 be-sued clause conferred federal subject matter jurisdiction. 534 F.3d at 788. The D.C. Circuit  
 20 recognized the difference between the two charters, noting that the Red Cross’s charter stated  
 21 “courts of law and equity, State or Federal” and Fannie Mae’s stated “any court of competent  
 22 jurisdiction, State or Federal.” *Id.* at 784. The circuit court found that federal jurisdiction  
 23 existed because Fannie Mae’s “sue and be sued” provision expressly referred to “the federal  
 24 courts in a manner similar to the Red Cross statute.” *Id.* The circuit court disagreed with the  
 25 district courts that found that applying the *Red Cross* rule to Fannie Mae rendered the words  
 26 “of competent jurisdiction” superfluous.” *Id.* at 785. The circuit court held that the words “of  
 27 competent jurisdiction” were not rendered meaningless in the charter because they helped  
 28 clarify that: (i) litigants in state courts of limited jurisdiction must satisfy the appropriate

1 jurisdictional requirements; (ii) litigants, whether in federal or state court, must establish that  
 2 court's personal jurisdiction over the parties; and (iii) litigants relying on the "sue-and-be-sued"  
 3 provision can sue in federal district courts but not necessarily in all federal courts. *Id.*

4 In contrast, the district court in *Rincon Del Sol, LLC v. Lloyd's of London*, 709 F.Supp.2d  
 5 517 (S.D. Tex. 2010), found that Fannie Mae's charter did not work to confer original subject  
 6 matter jurisdiction upon the federal courts. *Id.* at 525. That court found that Fannie Mae's "of  
 7 competent jurisdiction" language was significant and distinguished it from the provision in the  
 8 Red Cross's charter. *Id.* at 523. The court, agreeing with *Knuckles v. RBMC, Inc.*, 481  
 9 F.Supp.2d 559 (S.D. W.Va. 2007), found that "for the phrase 'any court of competent  
 10 jurisdiction' to have any meaning it should be read as differentiating between state and federal  
 11 courts that possess 'competent' jurisdiction, i.e., an independent basis for jurisdiction, from  
 12 those that do not." *Id.* at 524-25. The court concluded that the "federal forum would be  
 13 appropriate if there existed an independent basis of jurisdiction." *Id.* at 525.

14 This Court, being cognizant that neither the Supreme Court nor the Ninth Circuit has  
 15 addressed whether Fannie Mae's charter confers federal subject matter jurisdiction, finds  
 16 *Pirelli* unpersuasive. This Court agrees with the *Rincon* court that Fannie Mae's charter, 12  
 17 U.S.C. § 1723a(a), neither confers nor creates subject matter jurisdiction in the federal courts.

18 However, this Court finds that federal subject matter jurisdiction does exist  
 19 independently on other grounds. First, the Court finds that FHFA, as conservator for Fannie  
 20 Mae and as an intervenor in this case, is a federal agency with the right to remove. See 12  
 21 U.S.C. § 4511(a) (providing that the FHFA is an "independent agency of the Federal  
 22 Government" which has authority over Fannie Mae); 12 U.S.C. § 4617(b)(11)(B)(i) (providing  
 23 that in the event of any appealable judgment, the Agency as conservator "shall have all of the  
 24 rights and remedies available to the regulated entity (before the appointment of such  
 25 conservator or receiver) and the Agency, including removal to Federal court and all appellate  
 26 rights"); 28 U.S.C. § 1442(a)(1) (providing that a "civil action or criminal prosecution  
 27 commenced in a State court against [the United States or any agency thereof] may be  
 28 removed by them to the district court of the United States").

1           Second, the Court finds that federal questions exist because interpretation of federal  
 2 law is necessary to the adjudication of Plaintiffs' state law claims. In *Grable v. Sons Metal*  
 3 *Prod., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 125 S.Ct. 2363, 162 L.Ed.2d 257 (2005), the  
 4 Supreme Court held that "a federal court ought to be able to hear claims recognized under  
 5 state law that nonetheless turn on substantial questions of federal law." *Id.* at 312, 125 S.Ct.  
 6 at 2367. The Supreme Court recognized that, although the state law may provide a cause of  
 7 action, federal-question jurisdiction may arise because the principal issue in the case depends  
 8 upon construction or application of federal law. *Id.* at 312-13, 125 S.Ct. at 2367.

9           In this case, Plaintiffs' cause of action depends on whether Fannie Mae falsely claimed  
 10 it was a government agency, department, or instrumentality exempt from taxes. In order to  
 11 determine whether Fannie Mae is a government entity, a court would have to interpret federal  
 12 law and examine Fannie Mae's federal charter and the explicit federal provision exempting it  
 13 from taxation. See 12 U.S.C. § 1723a(a), (c). The federal exemption, 12 U.S.C. § 1723a(c),  
 14 states in full:

15           (1) The Association, including its franchise, capital, reserves, surplus, mortgages  
 16 or other security holdings, and income *shall be exempt from all taxation now or*  
*hereafter imposed by the United States, by any territory, dependency, or*  
*possession thereof, or by any State, county, municipality, or local taxing*  
*authority, except that any real property of the Association shall be subject to*  
*State, territorial, county, municipal, or local taxation to the same extent*  
*according to its value as other real property is taxed.*

19           (2) The corporation, including its franchise, capital, reserves, surplus, mortgages  
 20 or other security holdings, and income, *shall be exempt from all taxation now or*  
*hereafter imposed by any State, territory, possession, Commonwealth, or*  
*dependency of the United States, or by the District of Columbia, or by any*  
*county, municipality, or local taxing authority, except that any real property of the*  
*corporation shall be subject to State, territorial, county, municipal, or local*  
*taxation to the same extent as other real property is taxed.*

23           12 U.S.C. § 1723(c)(1)-(2) (emphasis added). Therefore, federal subject matter jurisdiction  
 24 exists because in order to proceed to any state-law claim against Fannie Mae a court will first  
 25 have to construe federal law. See *Grable*, 544 U.S. at 312-13, 125 S.Ct. at 2367. Accordingly,  
 26 the Court finds that federal subject matter jurisdiction exists and denies Plaintiffs' motion to  
 27 remand.

## **CONCLUSION**

For the foregoing reasons, IT IS ORDERED that Plaintiffs' Motion to Remand (#94) is DENIED.

DATED: This 4th day of February, 2011.

United States District Judge